

**PREPAID RENTAL LISTING SERVICE
LAW & REGULATION EXCERPTS**

RE 269 (Rev. 1/01)

BUSINESS & PROFESSIONS CODE**10167. Definitions**

The definitions used in this section shall govern the construction and terms as used in this article:

- (a) "Prepaid rental listing service" means the business of supplying prospective tenants with listings of residential real properties for tenancy, by publication or otherwise, pursuant to an arrangement under which the prospective tenants are required to pay an advance or contemporaneous fee (1) specifically to obtain listings or (2) to purchase any other product or service in order to obtain listings, but which does not otherwise involve the negotiation of rentals by the person conducting the service. "Prepaid rental listing service" does not include the business of providing roommate referral information designed to assist persons in locating a roommate who meets various selection criteria related to the prospective roommate's personal traits, characteristics, habits or preferences, and selection criteria related to the residential real property occupied by the prospective roommate.
- (b) "Licensee" means a person licensed to conduct a prepaid rental listing service or a person engaged in the business of a prepaid rental listing service under a real estate broker license.
- (c) "Location" means the place, other than the main or branch office of a real estate broker, where a prepaid rental listing service business is conducted.
- (d) "Designated agent" means the person who is in charge of the business of a prepaid rental listing service at a given location.
- (e) "Fee" means the charge required by a licensee (1) to obtain listings of residential real properties for tenancy or (2) to purchase any other product or service in order to obtain listings.
- (f) "Service charge" means the amount of the fee that a licensee may retain if a prospective tenant finds housing through a source other than the listings supplied by the licensee.

10167.1. Newspapers of General Circulation Excluded

This article shall not apply to a newspaper of general circulation.

10167.2 License Required

- (a) It is unlawful for any person to engage in the business of a prepaid rental listing service unless licensed in that capacity or unless licensed as a real estate broker.
- (b) (1) The requirements of this article apply only to the provision of listings of residential real properties for tenancy by prepaid rental listing services. Except if expressly provided otherwise in this article, the require-

ments of this article do not apply to any other goods or services sold by a prepaid rental listing service as long as the purchase of those goods or services is not required to obtain those listings and as long as the purchase of those goods or services is not included in the same contract as the contract to provide those listings, and as long as the contract to provide those listings clearly specifies that the purchase of any other goods and services is optional, and as long as the price charged for any other goods and services is fair and reasonable.

- (2) In an action alleging that the price charged for any other goods and services is not fair and reasonable, the burden shall be on the commissioner to demonstrate that the price charged unreasonably exceeds the fee customarily charged for the same or comparable goods or services in the community in which the prepaid rental listing service operates. The fact that the price charged for goods or services exceeds the cost incurred by the prepaid rental listing service shall not render the price charged for the goods or services to not be fair or reasonable, so long as the price charged does not unreasonably exceed the fee customarily charged for the same or comparable goods or services in the community in which the prepaid rental listing service operates.

10167.3 Separate Application for Each Location - Broker May Provide Service

- (a) A separate application for a license as a prepaid rental listing service shall be made in writing for each location to be operated by a licensee other than a real estate broker. Each application shall be on forms provided by the department, shall be signed by the applicant, and shall be accompanied by a one hundred dollar (\$100) application fee for the first location, and a twenty-five dollar (\$25) application fee for each additional location of the applicant. Applications to add or eliminate locations during the term of a license shall be on forms prescribed by the department. A twenty-five dollar (\$25) application fee for the remainder of a license term for each location to be added shall accompany the application.
- (b) A real estate broker may provide a prepaid rental listing service at a licensed office for the conduct of his or her real estate brokerage business if the business at the office is conducted under the immediate supervision of the broker or of a real estate salesperson licensed to, and acting on behalf of, the broker.

10167.4 Application Hearing

The commissioner may require such proof as he or she may deem advisable concerning the honesty and truthfulness of (a) any applicant for a license as a prepaid rental listing service, (b) the desig-

nated agents of the applicant, (c) the officers, directors, and any persons owning 25 percent or more of the shares of any corporation making such an application, or (d) any person owning or controlling a beneficial ownership interest of 25 percent or more in the entity making application before authorizing the issuance of a license for a location. For this purpose, the commissioner may hold a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and may refuse to issue a license to an applicant who does not furnish satisfactory proof of his or her honesty and truthfulness or of the honesty and truthfulness of the corporate officers, directors, and shareholders. To assist in this determination, the commissioner shall require the fingerprinting of every original applicant including designated agents, officers, directors, and persons owning 25 percent or more of the shares of the corporate applicant.

10167.5 Supervision - Termination of Designated Agent - License Expiration

The business at a location licensed pursuant to subdivision (a) of Section 10167.3 shall be conducted under the immediate supervision of the licensee or a designated agent who is not a designated agent at any other location. Whenever a designated agent ceases permanently to be a designated agent at any location because of death, termination of employment, or any other reason, the licensee, within five days thereafter, shall give written notice to the department. A license issued for a particular location shall automatically expire 60 days after the time the business conducted at such location ceases for any reason to be under the charge of and managed by the designated agent of record with the department, unless within such 60-day period the licensee submits written notice of the new designated agent to the department.

A designated agent of the licensed service may serve as designated agent for the location in question as well as for the location for which he or she is the designated agent of record during the period of 60 days.

10167.6 Nonresident Licensees

Every applicant for a prepaid rental listing service license who is not a resident of this state shall file with the application for a license an irrevocable consent that in any action arising out of the activities of the prepaid rental listing service commenced against him or her in this state, if personal service of process upon him or her cannot be made in this state in the exercise of due diligence, a valid service may be made upon him or her by delivering the process to the Secretary of State.

Insofar as possible, the provisions of Section 1018 of the Code of Civil Procedure relating to service of process on the Secretary of State are applicable to this section.

10167.7 Bond Requirement - Each Location

Except as provided in Section 10167.8, each licensee shall provide to the department, and at all times maintain in force, a bond in the amount of ten thousand dollars (\$10,000) for each location. The bond may be in the form of a corporate surety bond, or a cash

deposit. A cash deposit may be deposited by the licensee in an interest-bearing account assigned to the commissioner, with interest earned thereon payable to the licensee. The bond or cash deposit may be utilized by the commissioner for the benefit of any unsatisfied judgment creditor in an action pursuant to subdivision (e) of Section 10167.10.

10167.8 Bond Exemptions

The requirement of Section 10167.7 shall not apply to any prepaid rental listing service operated by: (a) a person exempt from the payment of federal and state income taxes; (b) an agency of the federal, state, or local government; or (c) a real estate broker conducting a prepaid rental listing service pursuant to a real estate license.

10167.9 PRLS Contract Requirements - DRE Approval of Contract Required

- (a) Prior to the acceptance of a fee, a licensee shall offer the prospective tenant a written contract, either on paper or in electronic form, which shall include at least the following:
 - (1) The name of the licensee and the addresses and telephone numbers of the principal office or location of the licensee and of the location, or branch office of a real estate broker, providing the listing to the prospective tenant.
 - (2) Acknowledgment of receipt of the fee, including the amount.
 - (3) A description of the service to be performed by the licensee, including significant conditions, restrictions, and limitations where applicable.
 - (4) The prospective tenant's specifications for the rental property, including, but not limited to:
 - (A) Type of structure, including, but not limited to, detached single-family home, apartment, or duplex.
 - (B) Location by commonly accepted residential area name, by designation of boundary streets, or by any other manner affording a reasonable means of identifying locations acceptable to the prospective tenant.
 - (C) Furnished or unfurnished.
 - (D) Number of bedrooms required.
 - (E) Maximum acceptable monthly rental.
 - (5) The contract expiration date, which shall not be later than 90 days from the date of execution of the contract.
 - (6) A clause setting forth the right to a full or partial refund of the fee paid as provided in Section 10167.10.
 - (7) The signature and printed full name of the licensee or of the designated agent, real estate salesperson, or employee acting on behalf of the licensee. The signature of

any person, including any signature required by the terms of the contract to be provided by the prospective tenant, may be provided in any electronic form that provides a reasonable method of indicating that the individual whose signature is required authorized the contract to be signed in that electronic form.

- (8) A clause in bold type letters outlining the small claims court remedy available to the prospective tenant.
- (9) A clause in boldface type letters clearly stating that the purchase of any goods and services other than the provision of listings of residential real properties for tenancy is optional.
- (b) (1) The original of each contract, any separate contracts for required goods or services, refund claims, receipts and any other relevant documents shall be retained by the licensee for a period of not less than three years from the date of termination of the contract during which time the contract shall be subject to examination by a duly authorized representative of the commissioner. Any records retained pursuant to this subdivision that are stored in the ordinary course of business in digital media shall, upon request of a duly authorized representative of the commissioner, be provided on diskette, CD-ROM or similar portable digital storage medium. For purposes of this subdivision, the "original" of a contract executed in electronic form shall be either the copy of the contract stored in digital media or a paper printout of that contract.
- (2) Any licensee, or employee thereof, shall dispose of the documents required to be kept pursuant to paragraph (1) by shredding or other appropriate means so that the identity of the prospective tenant may not be determined from the disposed information alone or in combination with other publicly available information.
- (c) The form of contract proposed to be used by a licensee to effect compliance with this section shall be filed with the department prior to use. Any modification of a form previously filed with the department, including a change in the name or business address of the licensee, shall also be filed prior to use. The department shall withhold the issuance or renewal of a license until the department has approved the contract. If a proposed modification to a contract has not been approved or disapproved within 15 working days of being filed with the department, the proposed modification shall be deemed approved. If a proposed modification or contract provision is disapproved, the department shall communicate that disapproval in writing to the licensee within 15 working days of being filed with the department, accompanied by a written justification of why the modification or contract provision is contrary to the requirements of this article.
- (d) Notwithstanding any other provision of law, a contract for prepaid rental listing services executed in electronic form, and signed in any electronic form that provides a reasonable

method of indicating that the individual whose signature is required authorized the contract to be signed in electronic form, shall be valid to the same extent as an executed written contract. Upon request by the customer, the licensee shall deliver an executed paper copy to the customer within five working days of receiving the request.

10167.10 Refund of Advance Fee Paid

- (a) (1) A licensee shall refund in full the fee paid by a prospective tenant if the licensee does not, within five days after execution of the contract, supply at least three rental properties then available to the prospective tenant and meeting the specifications of the contract, unless the prospective tenant obtains a rental through the services of the licensee.
- (2) A licensee will be deemed to have supplied information meeting the specifications of the prospective tenant if the information supplied meets the contract specifications with reference to: (i) type of structure; (ii) designated area; (iii) furnished or unfurnished; (iv) number of bedrooms; (v) maximum rental; and (vi) any other specification expressly set forth in the contract. A demand for the return of the fee shall be made by or on behalf of the prospective tenant within 10 days following the expiration of the five-day period referred to above by delivery or by mailing by registered or certified mail to the address of a location, or branch office of a real estate broker, set forth in the contract.
- (b) (1) Except as provided in paragraph (3), a licensee shall refund any fee paid over and above the sum of a fifty dollar (\$50) service charge to the prospective tenant if the prospective tenant obtains a rental other than through the services of the licensee during the term of the contract or does not obtain a rental, provided that the prospective tenant demands a return of that part of the fee within 10 days after the expiration of the contract.
- (2) The licensee shall refund any fee paid over and above the sum of a fifty dollar (\$50) service charge to the prospective tenant within 10 days of receipt from the prospective tenant of either the documentation specified in subparagraph (A) or the written statement specified in subparagraph (B), as applicable:
 - (A) Except as specified in subparagraph (B), a prospective tenant demanding a refund shall provide to the licensee reasonable documentation of the prospective tenant's new rental or of the fact that the prospective tenant did not move, such as a lease, rental agreement, or utility bill, with sufficient information to verify that the new rental was not obtained through the services of the licensee or that the prospective tenant did not move.
 - (B) If the prospective tenant is unable to locate or provide the documentation specified in subparagraph

graph (A), the prospective tenant may, at his or her option, fill out and sign a written statement, supplied by the licensee, in the following form:

I, _____ (name of prospective tenant), do swear or affirm the following: I currently live at _____ (street address). The following statement is true (check one):

☐ I have rented a unit at the above address. I did not obtain this rental through the services of _____ (name of licensee) during the time of our contract.

☐ I did not find a new rental and did not move. I still live at the above address.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

_____ (date)

_____ (location)

_____ (signature)

- (3) On or after January 1, 2002, the department may, from time to time, by regulation, adjust the amount of the allowable service charge to reflect the rate of inflation from the previous date that the amount of the allowable service charge was established, as measured by the Consumer Price Index or other method of measuring the rate of inflation which the department determines is reliable and generally accepted.
- (c) Each contract shall contain provisions that shall read as follows unless different language shall have been approved in writing by the department prior to use:

RIGHT TO REFUND

(Full capital letters, in 12-point type or greater, boldface or italicized)

If, within five days after payment of a fee, the licensee has not supplied the prospective tenant with at least three available rental properties meeting the specifications of the contract as to (i) type of structure; (ii) designated area; (iii) furnished or unfurnished; (iv) number of bedrooms; (v) maximum rental; and (vi) any other specification expressly set forth in the contract, the full amount of the fee paid shall be refunded to the prospective tenant upon presentation of evidence of that failure within 10 days after the expiration of the five-day period. The prospective tenant is not entitled to a refund if the prospective tenant obtains a rental through the services of the licensee.

If the prospective tenant obtains a rental other than through the services of the licensee during the term of this contract or if the prospective tenant does not obtain a rental through the services of the licensee during the term of the contract, the licensee shall refund the fee received in excess of a

(insert applicable limit pursuant to subdivision (b) of Section 10167.10 of the Business and Professions Code) service charge to the prospective tenant within 10 days after the prospective tenant supplies either (i) reasonable documentation of the prospective tenant's new rental or of the fact that the prospective tenant did not move, such as a lease, rental agreement, or utility bill, with sufficient information to verify that the new rental was not obtained through the services of the licensee or that the prospective tenant did not move, or (ii) if the prospective tenant is unable to locate or provide that documentation, the prospective tenant may, at his or her option, fill out a written form provided by the licensee and signed by the prospective tenant under penalty of perjury stating that he or she did not obtain a rental through the services of the licensee during the time of the contract.

To be entitled to a refund in excess of the service charge, the prospective tenant must mail or deliver the demand for refund not later than 10 days after expiration of this contract, and must supply either (i) reasonable documentation of the prospective tenant's new rental or of the fact that the prospective tenant did not move, such as a lease, rental agreement, or utility bill, with sufficient information to verify that the new rental was not obtained through the services of the licensee or that the prospective tenant did not move, or (ii) a written form provided by the licensee and signed by the prospective tenant under penalty of perjury stating that he or she did not obtain a rental through the services of the licensee during the time of the contract. The documentation may be supplied after the demand for a refund is mailed or delivered, provided that it is supplied within a reasonable time after it becomes available.

- (d) This section shall not apply to a person purchasing rental information for a purpose other than that of locating a rental unit for personal use or the use of a designated person.
- (e) If the licensee fails to make a refund as provided in this section and if the denial or delay in making the refund is found to have been done in bad faith, a court of appropriate jurisdiction, including a small claims court, shall be empowered to award damages to the plaintiff in an amount not to exceed one thousand dollars (\$1,000) in addition to actual damages sustained by the plaintiff. If the licensee refuses or is unable to pay the damages awarded by the court, the award may be satisfied out of the security required under Section 10167.7.

10167.11 Violations

10167.11. It shall be a violation of this article for any licensee or any employee or agent of a licensee to do the following:

- (a) Make, or cause to be made, any false, misleading, or deceptive advertisements or representations concerning the services that the licensee will provide to prospective tenants.
- (b) Refer a property to a prospective tenant knowing or having reason to know that:

- (1) The property does not exist or is unavailable for tenancy.
- (2) The property has been described or advertised by or on behalf of the licensee in a false, misleading, or deceptive manner.
- (3) The licensee has not confirmed the availability of the property for tenancy during the four-day period immediately preceding dissemination of the listing information. However, it shall not be a violation to refer a property to a prospective tenant during a period of from five to seven days after the most recent confirmation of the availability of the property for rental if the licensee has made a good faith effort to confirm availability within the stated four-day period, and if the most recent date of confirmation of availability is set forth in the referral.
- (4) The licensee has not obtained written or oral permission to list the property from the property owner, manager, or other authorized agent.

10167.12 License Suspension or Revocation

- (a) The commissioner may suspend, deny, or revoke the license of a licensee or the license of the licensee to operate at one or more locations for either of the following:
 - (1) A violation of this article by a licensee or by an employee or agent, including a designated agent, of the licensee.
 - (2) A conviction of a licensee, or a designated agent, or of an officer, director, or owner of 25 percent or more of the shares of a corporate licensee for a crime which is substantially related to the qualifications, functions, or duties of a prepaid rental listing service licensee.
- (b) For the purpose of determining whether grounds exist for suspending, denying, or revoking the license of a licensee, the commissioner shall hold a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

10167.13. Two-year License Term

A prepaid rental listing service license issued by the department shall be for a period of two years. An application and fee for renewal filed with the department before midnight of the last day of the period for which a previous license was issued entitles the licensee to continue operating at all locations specified in the previous license for which a renewal fee is paid.

10167.14. Injunction

Whenever any person has engaged or threatens to engage in any acts or practices which constitute, or will constitute a violation of a provision of the article, the superior court of the county in which the acts or practices have taken place, or are about to take place, on complaint of the commissioner, the attorney general, district attor-

ney, or city attorney, may enjoin such acts or practices by appropriate order. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required.

10167.15. Misdemeanor

Any person, including an officer, director, or employee of a corporation who willfully violates any provision of this article is guilty of a misdemeanor.

10167.16. Applicable Laws

A person or corporation licensed pursuant to this article and not engaging in acts for which a real estate license is required under Article 1 (commencing with Section 10130) of Chapter 3 of Part 1 of Division 4, shall be subject, in addition to the provisions of this article, to the provisions of Chapter 1 (commencing with Section 10000) and Chapter 2 (commencing with Section 10050) of Part 1 of Division 4, and to Sections 10450, 10452, 10453, and 10454.

10167.17. Provisions of Licensure

The commissioner shall, by regulation, make prepaid rental listing service licensees and applicants for prepaid rental listing service licenses subject to the same provisions respecting licensure as are applicable to real estate licenses under Sections 10151.5, 10156.5, 10156.6, 10156.7, 10200, and 10201.

REGULATIONS OF THE REAL ESTATE COMMISSIONER

Amendments to Regulations 2850, 2851, 2851.1, 2851.2, 2852, 2852.1, and 2853 are pending. We expect amendments to be finalized by summer 2001.